

right to recover possession. The tenant immediately loses the protection of the Ordinance and lays himself open to ejection by the landlord. The landlord (and his successors in title) may at any time thereafter terminate the contractual tenancy and recover possession of the premises from the tenant.

In the present case, the defendants had been collecting rent in excess of the maximum permitted under the second limb of paragraph (g) of section 15(1) of the Ordinance from Hin Seng & Co. for some seven years and had thereby given the plaintiff grounds for invoking paragraph (g). The plaintiff has clearly established her right to possession under paragraph (g) of section 15(1) of the Control of Rent Ordinance. The defendants are accordingly ordered to give forthwith to the plaintiff vacant possession of the ground and first floors of house No. 11 Phillip Street, Singapore. The defendants are also ordered to pay the plaintiff the costs of this action as taxed.

Order accordingly.

Solicitors: S. K. Lee; R. C. H. Lim & Co.

KOH JOK SIM v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Aziz J.) March 16, 1966]

[Kota Bahru — Criminal Appeal No. 3 of 1966]

Evidence — Statements to excise officers — Criminal Procedure Code (Cap. 6), s. 113 and Evidence Ordinance, 1950, ss. 25 & 26.

Excise Act, 1961 — Statements to excise officers — Admissibility.

This was an appeal against the conviction of the appellant on a charge of possession of intoxicating liquor and possession of a still. The evidence against the appellant on the first charge consisted solely of his admission, which was given in answer to questions by an excise officer, who it appeared had said in Malay "Don't you tell lies".

Held: (1) section 113 of the Criminal Procedure Code (Cap. 6) and sections 25 and 26 of the Evidence Ordinance, 1950, do not apply to excise officers and statements made by an accused person to an excise officer are admissible in evidence provided the court is satisfied that the answers were given voluntarily;

(2) in this case the part of the statement made by the appellant after the warning had been given was inadmissible and therefore the conviction on the first charge must be quashed.

CRIMINAL APPEAL.

C. O. Lim for the appellant.

Azmi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the respondent.

Abdul Aziz J. (delivering oral judgment): The appellant was convicted of two offences under the Excise Act, 1961: firstly, for possession of approximately 13 gallons of intoxicating liquor contained in 13 bottles and secondly, for possession of a still for distilling liquor. He was

A convicted and sentenced to a fine of \$640 in respect of the first charge and \$160 in respect of the second charge. Against the conviction and sentence the appellant has now appealed.

Evidence showed that on the day in question a party of excise officers raided the appellant's house situated in a kampong at Temangan in the Machang district. The appellant's house was apparently one of the many houses in that kampong as evidence showed that there were two or three other houses two hundred yards away from the appellant's house in the same kampong. In the house the excise party found a kuali and in a hut 25 yards from the house they found a drum vat. According to the evidence the kuali was clean and there was a distinct ring mark under the kuali which fitted the vat which was found in the hut near the house. The appellant admitted ownership of these two articles. Upon further search the excise party found 13 bottles of intoxicating liquor near the river bank about 400 yards away from the house and ten feet away from the place where the bottles were found there was a fireplace and near the fireplace were two jars containing fermented mash and one drainer and one pipe. At this stage I would like to quote the evidence of P.W.1 as to what happened next. He said in his examination-in-chief:—

"Having discovered them (the articles) I questioned the accused. In his reply he replied that P.6 (the 13 bottles) belonged to him for his own consumption."

In cross-examination he said:—

F "When I questioned accused in Malay, I asked 'Ini barang semua siapa punya'. I did say 'Awak jangan chakap bohong' (Don't you tell lies)."

As the evidence in support of the 1st charge was dependent solely upon the admission of the appellant and as unfortunately the learned president did not deal with the question of admissibility of the statement, it is, therefore, necessary for me to examine the effect of those words upon the statement.

It is fairly well settled that section 113 of the Criminal Procedure Code and sections 25 and 26 of the Evidence Ordinance do not apply to excise officers and there is nothing in law to prevent the answers given to an excise officer by a person subsequently accused of an offence from being used in evidence subject to the important proviso that the court is satisfied that the answers were voluntarily given.

I A number of cases including two Malayan cases were cited in support of the hypothesis that the voluntary nature of the statement would be lost if words like "You better tell the truth" or "You are bound to say everything" were used before the statement was given. Having regard to these cases I feel compelled to come to the conclusion that that part of the statement given

by the appellant after the 'warning' has been given was inadmissible.

As regards the 2nd charge I am not prepared to agree that there was no evidence on which the learned president could probably have come to the conclusion that the appellant was not in possession of the still. The component parts of the still, i.e., the kuali and the vat were found in various parts of the premises. The appellant himself admitted ownership and possession of the two articles. The presumption of possession under section 17(3) of the Excise Act, 1961 would also be applicable. Also, except for the two minor items as the drainer and pipe, the kuali and vat would make a still for the manufacture of the liquor. Under section 17(1) of the Excise Act it is as much an offence for having in possession apparatus for distilling as for a complete still.

In the circumstances the appeal against conviction and sentence in respect of the first charge is allowed and the sentence set aside and any fine paid shall be refunded. The appeal against conviction and sentence in respect of the second charge is dismissed.

Order accordingly.

WONG YUK AI v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.) February 3, 1966]

[Sibu — Criminal Appeal No. 1 of 1966]

Criminal Law and Procedure — Sentence — Accused already serving sentence — Whether sentences can be made concurrent — Criminal Procedure Code (Sarawak Cap. 58), s. 240.

The appellant had previously been convicted and sentenced. Subsequently he was charged with an offence under section 182 of the Penal Code and he was sentenced to six months imprisonment. The learned magistrate ordered the sentence to run concurrently with the sentence the appellant was serving.

Held: (1) in view of section 420 of the Criminal Procedure Code the sentence should have been made to commence immediately or at the expiration of the previous term of imprisonment;

(2) in this case the sentence should be varied to one of four months imprisonment from the date of conviction.

CRIMINAL APPEAL.

C. T. Wong for the appellant.

Frank Ngui (A.S.P.) for the respondent.

Lee Hun Hoe J.: This is an appeal against sentence. Appellant was convicted and sentenced to six months' imprisonment on his own plea for committing an offence under section 182 of the Penal Code. The sentence was to run concurrently with a sentence which appellant was serving.

Whether sentences imposed should run consecutively or concurrently is a matter for the discretion of the court but such discretion must

be exercised judicially. It is not unusual for a court to direct sentences for two or more offences to run concurrently when the sentences are passed at one and the same trial.

In this case the appellant was already undergoing imprisonment and a subsequent sentence could commence only on the date of conviction or on the expiry of his imprisonment. It is not possible for the court to direct the subsequent sentence to run concurrently with the sentence which appellant was already serving, having been convicted at a different trial. This is obvious in the light of section 240 of the Criminal Procedure Code. I can only presume that the learned magistrate had inadvertently overlooked that section and that his attention had not been drawn to it at the time. This section reads:—

"240. — (1) When a person who is an escaped convict or is undergoing a sentence of imprisonment is sentenced to imprisonment, such imprisonment shall commence either immediately or at the expiration of the imprisonment to which he has been previously sentenced, as the court awarding the sentence may direct. A sentence of death shall be executed notwithstanding the pendency of any sentence of imprisonment.

(2) Nothing in subsection (1) shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Had there been no appeal and had the case come to my knowledge I would have to vary the term of the sentence in the exercise of my revisional power.

It was submitted that the maximum penalty for the offence is only "six months". This alone is not sufficient ground for saying that a deterrent sentence should not be imposed. In fact the maximum penalty is "imprisonment for six months, and a fine of one thousand dollars." Appellant had a previous conviction. It was also mentioned that this type of offence is rarely committed. This may be so. But this may be because people realise the seriousness of giving false information to police. Perhaps the fact that appellant admitted his guilt without qualification showed that he realised his wrong and regretted his folly and this may be regarded as a mitigating factor. He should have told the learned magistrate all the circumstances when invited to do so by the learned magistrate before sentence was passed. Nevertheless, by imposing a concurrent sentence the magistrate's intention was clearly to exercise leniency. It is difficult to know what sentence he would have imposed had the provisions of section 240 been brought to his attention.

In the circumstances I will err on the side of mercy and justice will be done if I allow the appeal by reducing the sentence to one of four months' imprisonment to run from the date of his conviction, that is, 4th January, 1966.

Appeal allowed. Sentence reduced.